

Dated

20XX

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**SONI LIMITED**

and

**[SUPPLIER NAME]**

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**TRANSMISSION USE OF SYSTEM AGREEMENT  
FOR SUPPLIER**

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(b) such credit status which, in the opinion of SONI, provides equivalent comfort as that set out in paragraph (a) above,

provided that if any person previously possessing the rating set out in (a) above should cease to possess such rating or, having Approved Credit Status by virtue only of approval pursuant to paragraph (b), should be the subject of a notice by SONI to the User to the effect that the issuer has, in the reasonable opinion of SONI, suffered a material adverse change in its financial condition since its approval, such person shall cease to have Approved Credit Status;

<b>“Authority”</b>	means the Northern Ireland Authority for Utility Regulation;
<b>“Business Day”</b>	means any day (excluding Saturdays and Sundays) on which banks are open for domestic business in Belfast;
<b>“Capacity Market Code”</b>	has the meaning given to that term in the Licence;
<b>“Charging Period”</b>	means the period over which charges are levied and invoiced as defined in the Agreement and the Statement;
<b>“Competent Authority”</b>	includes the Department for the Economy, the Authority, and any local, national or supra-national agency, authority, department, inspectorate, minister, ministry, official, court, tribunal or public or statutory person (whether autonomous or not) of, or of the government of, the United Kingdom or the European Union;
<b>“Connection Agreement”</b>	means an agreement between SONI and a Customer, or the relevant Distribution Network Owner and a Customer, for connection to the Transmission System or the NI Distribution System respectively;
<b>“Connection Equipment”</b>	means  (a) the part of the relevant DNO (s)’ Plant and Apparatus which has been or is to be provided and installed for the purposes of providing a connection between the NI Distribution System and the Customer’s installation at the Point of Supply; and/or  (b) the part of NIE Networks’ Plant and Apparatus which has been or is to be provided and installed for the purposes of providing a connection between the Transmission System and the Customer’s installation at the Point of Supply;
<b>“Customer”</b>	means a person to whom electrical power is provided at a Point of Supply;
<b>“Customer’s Installation”</b>	means the electric lines situated upon the Customer’s side of the Point of Supply together with any Apparatus connected or intended to be permanently connected thereto;

<b>“De-energise”</b>	means the movement of any isolator, breaker or switch or the removal of any fuse or the taking of any other step whereby no electrical current can flow from the All-Island Transmission Networks through the Point of Supply and <b>“De-energisation”</b> , <b>“De-energised”</b> and <b>“De-energising”</b> shall be construed accordingly;
<b>“Deposit Account”</b>	means a deposit account at a bank in the UK that has Approved Credit Status where: <ul style="list-style-type: none"> <li>(a) the account is in the joint name of SONI and the User;</li> <li>(b) interest on the amount deposited in the account accrues for the benefit of the User, after any deduction for any tax or bank charges;</li> <li>(c) SONI and the User have irrevocably instructed the bank to make payments to SONI against the sole signature of SONI;</li> <li>(d) the bank has agreed that the amounts deposited in the account must not be set off or otherwise applied by the bank in respect of any indebtedness of the User or any other person; and</li> <li>(e) amounts (other than interest) standing to the credit of the account will not be paid to the User without the prior written agreement of SONI;</li> </ul>
<b>“Directive”</b>	includes any present or future Directive, request, requirement, instruction, direction or rule of any Competent Authority (but only, if not having the force of law, if it is reasonable in all the circumstances for it to be treated as though it had legal force) and includes any modification, extension or replacement thereof then in force;
<b>“Distribution Code”</b>	means the Distribution Code prepared pursuant to a Distribution Network Owner Licence, as from time to time revised in accordance with a Distribution Network Owner Licence that may incorporate, by reference, sections of the Grid Code;
<b>“Distribution Network Owner” or “DNO”</b>	means a licenced Distribution Network Owner of an NI Distribution System under article 10(1)(bb) of the Order or a party exempt from licensing under article 9 of the Order;
<b>“Distribution Network Owner Licence” or “DNO Licence”</b>	means an electricity distribution licence granted to a Distribution Network Owner under the Order;
<b>“Distribution Network Owner’s Plant and Apparatus”</b>	has the meaning given to that expression in the relevant Connection Agreement;
<b>“Distribution Use of</b>	means an agreement(s) between one or more Distribution Network Owners and any other person pursuant to which, <i>inter</i>

<b>System Agreement</b>	<i>alia</i> , such other person has the right to use the NI Distribution System;
<b>“Energisation”</b>	means the movement of any isolator, breaker or switch or the insertion of any fuse or the taking of any other steps so as to enable an electrical current to flow to or from the All-Island Transmission Networks through the Connection Equipment and <b>“energise”</b> and <b>“re-energise”</b> shall be construed accordingly;
<b>“Equivalent Agreement”</b>	means the use of system agreement that the User would have had with the Other TSO if the User was a supplier in the Republic of Ireland, if the User applied to the Other TSO for a use of system agreement, and if the Other TSO entered into such an agreement in accordance with its licence;
<b>“Equivalent Waiver”</b>	means an undertaking by ESB not to bring any claim in negligence, other tort, or otherwise howsoever against the User in respect of any act or omission of the User in relation to the subject matter of this Agreement, save in respect of claims against the User under any contract to which the User and ESB are (from time to time) party or in respect of fraudulent misrepresentation or death or personal injury resulting from the negligence of the User;
<b>“ESB”</b>	means the Electricity Supply Board in the Republic of Ireland (being the owner of the transmission system in the Republic of Ireland);
<b>“Force Majeure”</b>	means any event or circumstances which is beyond the reasonable control of either Party and which results in or causes the failure of that Party to perform any of its obligations under this Agreement including act of God, strike, lockout or other industrial disturbance, act of the public enemy, war declared or undeclared, threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, lightning, fire, storm, flood, earthquake, accumulation of snow or ice, lack of water arising from weather or environmental problems, explosion, fault or failure of Plant and Apparatus (which could not have been prevented by Good Industry Practice), governmental restraint, Act of Parliament, other legislation, by law and Directive (not being any order, regulation or direction under Article 35, 36, 37 or 38 of the Order or any other event or circumstance which could not have been prevented by the exercise of Good Industry Practice by SONI provided that lack of funds shall not be interpreted as a cause beyond that Party’s reasonable control;
<b>“General Conditions”</b>	means the Conditions Applicable to Electricity Agreements, as set out in Schedule 3 to this Agreement;
<b>“Good Industry Practice”</b>	means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar

	circumstances;
<b>“Grid Code”</b>	the Grid Code prepared pursuant to the Licence, as from time to time revised in accordance with the Licence;
<b>“Half Hour Metering Equipment”</b>	means metering equipment that collects and records data about consumption of electricity at intervals of 30 minutes or shorter intervals capable of being aggregated to 30 minute intervals;
<b>“Industry Arrangements”</b>	means: <ul style="list-style-type: none"> <li>(a) the Order and any direction or instruction issued under the Order, and any deemed agreement under the Order;</li> <li>(b) any standard, code, code of practice or associated instrument or agreement or other instrument or document established pursuant to the Order or any licence granted under the Order with which SONI and/or the User, as applicable, is required to comply or enter into and (for the avoidance of doubt) includes those instruments or documents referred to by name elsewhere in this Agreement;</li> <li>(c) the Trading and Settlement Code and any agreed procedures under that Code; and</li> <li>(d) the Capacity Market Code;</li> </ul>
<b>“Interconnector Connection Point”</b>	means the point of connection between the All-Island Transmission Networks and any Northern Ireland Interconnector (as defined in the Licence);
<b>“Letter of Credit”</b>	means an unconditional irrevocable stand-by letter of credit issued on behalf of the User by a financial institution with Approved Credit Status, in sterling and in favour of SONI, allowing for partial drawings and providing for payment to SONI by such financial institution forthwith on demand at a branch of the relevant financial institution and otherwise on terms which have been approved in advance by SONI;
<b>“Licence”</b>	means the licence to participate in the transmission of electricity granted to SONI under the Order;
<b>“Market Registration Code”</b>	means the Code of that name established by NIE Networks’ pursuant to its licence granted under the Order;
<b>“Market Registration Framework Agreement”</b>	has the meaning given to the term in the Market Registration Code;
<b>“Maximum Import Capacity”</b>	means, in relation to a Point of Supply, the maximum import capacity for that Point of Supply (in kVA) as determined in accordance with clause 8.2;
<b>“Metering Code”</b>	means the Metering Code of the Grid Code and the relevant provisions of the Distribution Code relating to metering;
<b>“Metering Equipment”</b>	means the metering equipment described in clause 10.1;

<b>“Northern Ireland Electricity Networks Limited” or “NIE Networks”</b>	means Northern Ireland Electricity Networks Limited, a company registered in Northern Ireland with company number NI0026041, whose registered office is at 120 Malone Road, Belfast, BT9 5HT(including its permitted successors and assigns);
<b>“NIE Networks’ Transmission Licence”</b>	means the licence to participate in the transmission of electricity granted to NIE Networks’ under the Order;
<b>“NIE Networks’ Plant and Apparatus”</b>	means the Plant and Apparatus owned by NIE Networks’ that forms part of or relates to the Transmission System together with the Plant and Apparatus owned by SONI;
<b>“NI Distribution System”</b>	has the meaning given to “distribution system” in the Licence;
<b>“Order”</b>	means the Electricity (Northern Ireland) Order 1992;
<b>“Other TSO”</b>	has the meaning given to “Republic of Ireland System Operator” in the Licence;
<b>“Party”</b>	means each person who is a Party to this Agreement and any successor(s) in title to, or permitted assign(s) of, such person;
<b>“Party Liable”</b>	means, in relation to clause 3 of the General Conditions, the Party which is liable to the other Party for loss arising from any breach by it as referred to in clause 3 of the General Conditions;
<b>“Payment Security Policy”</b>	means the Payment Security Policy prepared by SONI and approved by the Authority pursuant to Condition 31 of the Licence, as from time to time revised in accordance with the Licence;
<b>“Plant”</b>	means fixed and moveable items other than Apparatus;
<b>“Point of Supply”</b>	means a point where energy may flow between the Transmission System or the NI Distribution System and the Customer’s premises or facility;
<b>“Qualified”</b>	has the meaning given to it in the Capacity Market Code;
<b>“Qualifying Amount”</b>	has the meaning given to it in clause 6.7;
<b>“Regulations”</b>	means the Electricity Safety, Quality and Continuity Regulations (Northern Ireland) 2012;
<b>“Relevant Act or Omission”</b>	means any act or omission by a Relevant Person that is a breach of a Relevant Agreement, or that would (in the case of the Other TSO only) have been a breach of an Equivalent Agreement;
<b>“Relevant Agreement”</b>	means, in respect of: <ul style="list-style-type: none"> <li>(a) a Distribution Network Owner, any agreement for connection to and/or use of the NI Distribution System to which a Distribution Network Owner is party, and/or the Transmission Interface Arrangements;</li> </ul>

- (b) the Other TSO, any agreement for connection to and/or use of the All-Island Transmission Networks to which the Other TSO is party; and
- (c) ESB, the RoI Infrastructure Agreement;

<b>“Relevant Person”</b>	means NIE Networks’, a Distribution Network Owner, the Other TSO, or ESB;
<b>“RoI Infrastructure Agreement”</b>	means the ‘Infrastructure Agreement’ between the Other TSO and ESB dated 16 March 2006;
<b>“Security Cover”</b>	means security cover (if any) provided by the User to SONI under clause 7;
<b>“Single Electricity Market” or “SEM”</b>	means the single wholesale electricity market for the island of Ireland, implemented in Northern Ireland pursuant to section 23 of the Northern Ireland (Miscellaneous Provisions) Act 2006;
<b>“Statement”</b>	means the statement of charges issued by SONI under Condition 30 of the Licence;
<b>“Supplier”</b>	means the holder of a Supply Licence and references to a User being a “Supplier for a Point of Supply” shall be interpreted in accordance with clause 4.3;
<b>“Supply Licence”</b>	means a licence to supply electricity granted under the Order;
<b>“System Operator Agreement”</b>	has the meaning given to it in the Licence;
<b>“Trading and Settlement Code”</b>	means the Single Electricity Market Trading and Settlement Code as defined in the Licence;
<b>“Transmission Interface Arrangements”</b>	the Transmission Interface Arrangements prepared by NIE Networks’ and SONI pursuant to the NIE Networks’ Transmission Licence and the Licence;
<b>“Transmission System”</b>	has the meaning given to “transmission system” in the Licence;
<b>“Transmission Use of System Agreement”</b>	means an agreement between SONI and any person pursuant to which SONI grants rights to use the All-Island Transmission Networks;
<b>“Unmetered Customer”</b>	means a Customer receiving an unmetered supply in Northern Ireland who receives that supply of electricity through lines and equipment not exceeding 650 volts.
<b>“Value Added Tax” or “VAT”</b>	means Value Added Tax or any tax on the supply of goods and services which may hereafter replace value added tax.

- 1.2 Any reference in the Agreement to a statute, statutory instrument, order in council, Directive, regulation, order or other enactment shall be construed as a reference to such statute, statutory instrument, order in council, Directive, regulation, order or other enactment as modified, amended or re-enacted from time to time.
- 1.3 Any reference in the Agreement to another agreement or any deed or other instrument shall be construed as a reference to that other agreement, deed or other instrument as the same may have been, or may from time to time be, amended, varied, supplemented or novated.
- 1.4 Any reference in the Agreement to the Grid Code, Distribution Code or Trading and Settlement Code, or any section or provision of the Grid Code, Distribution Code or Trading and Settlement Code, shall be construed, at the particular time, as including a reference to the relevant code or the relevant section or provision in the code as it may have been amended, varied, supplemented or substituted.
- 1.5 Any reference in the Agreement to the neuter gender shall include references to the masculine and feminine gender and any reference to the singular shall include the plural and vice versa.
- 1.6 Any table of contents and clause headings are inserted for ease of reference only.
- 1.7 The word “including” and its variants shall be construed without limitation.
- 1.8 SONI may exercise its rights and perform its obligations under this Agreement itself or through agents or subcontractors. The use of such agents or subcontractors shall not relieve SONI of its obligations under this Agreement.
- 1.9 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

## **2. Conditions Precedent**

- 2.1 The obligation of SONI to ensure the transportation of energy on the All-Island Transmission Networks for the User to a particular Point of Supply is in each case subject to:
  - (a) the User being a Supplier authorised to supply electricity by virtue of a Supply Licence and such Supply Licence continuing in full force and effect throughout the term of this Agreement (or the User being exempt from the requirement to be so licenced under Article 9 of the Order);
  - (b) in relation to each particular Point of Supply for which the User is the Supplier, there being a subsisting Connection Agreement in respect of the Point of Supply and such Agreement continuing in full force and effect for so long as the User is the Supplier for that Point of Supply;
  - (c) the User being a party to a Distribution Use of System Agreement with NIE Networks’ or other DNO (as applicable) and remaining a party for the duration of this Agreement, to the extent applicable;
  - (d) the User being a party to the Trading and Settlement Code and remaining a party for the duration of this Agreement (or being exempt from the requirement to be and remain a party to the Trading and Settlement Code);

- (e) the User being a party to the Capacity Market Code, insofar as it is Qualified and as the Capacity Market Code is applicable to it;
- (f) the User being a party to the Market Registration Framework Agreement;
- (g) the User providing SONI with Security Cover where required in accordance with clause 7 and otherwise complying with its obligations under clause 7;
- (h) in relation to each particular Point of Supply for which the User is the Supplier, the condition in clause 8.1 relating to Maximum Import Capacity being fulfilled; and
- (i) in relation to each particular Point of Supply for which the User is the Supplier, metering being in place for the Point of Supply as required by clause 10.

### **3. Use of System**

- 3.1 Subject to the terms of this Agreement, the User may use the All-Island Transmission Networks for the purposes of supplying each Point of Supply for which the User is the Supplier or importing or exporting at an Interconnector Connection Point and SONI shall ensure transportation of energy on the All-Island Transmission Networks for the User to the level forecast by the User from time to time pursuant to the data requirements submitted by the User together with such margin as SONI shall in its reasonable opinion consider necessary having regard to SONI's duties under the Licence, except to the extent (if any) that SONI is prevented from doing so by transmission constraints or by insufficiency of generation and subject to any permitted variations under the Regulations or the Grid Code and up to the relevant Maximum Import Capacity (as described in clause 8.2). This Agreement shall continue until terminated in accordance with clause 12.
- 3.2 The rights to use the All-Island Transmission Networks granted under this Agreement are in respect only of supply in Northern Ireland.

### **4. Operational matters and Points of Supply**

- 4.1 Subject to the applicable requirements of the Grid Code SONI shall be entitled to execute outages of parts of the Transmission System or the relevant DNO's Plant and Apparatus at any time and from time to time. The Parties acknowledge that the relevant DNO is entitled to plan and execute outages of parts of the NI Distribution System at any time and from time to time, subject to the applicable requirements of the Distribution Code.
- 4.2 In the performance of its functions as transmission system operator, SONI shall be entitled to constrain any part of the Transmission System including exports on to and imports from the Transmission System.
- 4.3 The Points of Supply for which (subject to clause 4.4) the User is the Supplier under this Agreement are all those Points of Supply which are or become registered to the User or otherwise associated with or allocated to the User under applicable Industry Arrangements. In the case of Unmetered Customers, several Points of Supply may be grouped under one Meter Point Registration Number (as defined in the Market Registration Code).
- 4.4 Points of Supply will only cease to be Points of Supply for which the User is Supplier in accordance with the applicable Industry Arrangements.

4.5 SONI shall be entitled to vary the charges under this Agreement to reflect the addition or removal of Points of Supply for which the User is the Supplier.

4.6 The User shall comply with the applicable requirements of the Industry Arrangements and such procedures in relation to use of the Transmission System and registration of Points of Supply or other arrangements for associating Points of Supply with or allocating Points of Supply to the User, as are set out in such Industry Arrangements.

## **5. De-energisation/Re-energisation**

5.1 SONI shall be entitled to De-energise, and shall, in relation to a Point of Supply on the NI Distribution System, be entitled to request the relevant DNO to De-energise, any Point of Supply:

- (a) in accordance with the Connection Agreement which relates to the Point of Supply, if applicable;
- (b) in accordance with any Industry Arrangements applicable to the User and/or the Point of Supply;
- (c) if any of the conditions precedent set out in clause 2 applicable to the Point of Supply cease to be satisfied in relation to that Point of Supply;
- (d) when Force Majeure occurs;
- (e) to avoid or mitigate the effect of any material danger;
- (f) to avoid a breach of the Regulations;
- (g) to enable SONI or NIE Networks' to inspect, modify, maintain, repair or add to any part of the Transmission System or where De-energisation is required due to the same being undertaken on the NI Distribution System;
- (h) in case of accident or emergency affecting or likely to affect the Transmission System or any other system through which (directly or indirectly) SONI may receive or transmit electricity;
- (i) to avoid interference with the regularity or efficiency of any supplies to any person;
- (j) where clause 9 (relating to compliance with, among other things, the Grid Code and Good Industry Practice) is not fully complied with; or
- (k) on or after the expiry of notice given by the User under clause 12 (relating to termination).

5.2 Where De-energisation in accordance with clause 5.1 occurs, SONI shall give the User such notice as is reasonable in the circumstances and shall (except following De-energisation under clause 5.1(k) or De-energisation at the request or instruction of the User in accordance with the provisions of this Agreement and subject to the requirements of applicable Industry Arrangements) re-energise the Point of Supply or in respect of a Point of Supply on the NI Distribution System, be entitled to request the relevant DNO to re-energise the Point of Supply, as soon as reasonably practicable.

- 5.3 SONI shall, or in respect of a Point of Supply on the NI Distribution System be entitled to request the relevant DNO to, subject to the provisions of any Industry Arrangements relating to the De-energisation of any Point of Supply, as soon as reasonably practicable, De-energise any Point of Supply on the Transmission System or the NI Distribution System (as applicable) for which the User is the Supplier where instructed to do so in writing by the User. SONI shall promptly notify the User of the date and time at which such De-energisation was effected. The User shall reimburse SONI any expense incurred in relation to such De-energisation and shall indemnify SONI against any costs, liability, loss, or damage suffered as a result of such De-energisation provided SONI has acted in accordance with Good Industry Practice.
- 5.4 SONI shall, or in respect of a Point of Supply on the NI Distribution System be entitled to request the relevant DNO to, De-energise the Point of Supply in accordance with clause 5.3 following an instruction given by the User in accordance with clause 5.3 unless:
- (a) SONI considers it is not reasonable in all the circumstances to De-energise and notifies the User thereof not more than 3 Business Days after an instruction under clause 5.3;
  - (b) SONI is unable to De-energise or has delayed De-energisation for reasons beyond SONI's control (including where the Customer at the Point of Supply to be De-energised has failed to contact SONI to make an appointment for De-energisation) and SONI has notified the User of this inability or delay; or
  - (c) SONI considers that the notice from the User does not fulfil the requirements of clause 5.3 and notifies the User thereof not more than 3 Business Days after an instruction under clause 5.
- 5.5 Following a notification by SONI under paragraphs (a), (b) or (c) of clause 5.4, if the User disagrees with SONI it shall confirm its instruction to De-energise within 3 days of receipt of the notice. Where following confirmation of an instruction SONI fails to De-energise or in respect of a Point of Supply on the NI Distribution System, fails to instruct the relevant DNO to De-energise, as soon as reasonably practicable for a reason other than those set out in paragraphs (a), (b) or (c) of clause 5.4 SONI shall be liable to the User for any direct cost, loss or damage suffered by the User as a result from the date of the confirmatory instruction. The User shall be under an obligation to mitigate the consequences of the failure to De-energise.
- 5.6 SONI may disconnect or decommission a Point of Supply on the Transmission System when instructed to do so by a Customer or in accordance with the terms of any agreement between SONI and the Customer.

## **6. Calculation and Payment of Charges**

- 6.1 The User shall pay to SONI charges plus Value Added Tax pursuant to this clause 6 and Schedule 1.
- 6.2 SONI may, to the extent permitted by the Licence or other Industry Arrangements (as applicable to the charges in question), revise its charges or the basis of their calculation.
- 6.3 As soon as reasonably practicable after the end of each Charging Period SONI shall deliver to the User an account showing the charges payable in respect of that Charging Period and any adjustments. SONI may, in addition to the account for the Charging Period, deliver to

the User an account showing charges payable for services provided to the User by SONI as those charges are incurred.

- 6.4 On any occasion upon which the charges payable by the User under this Agreement have not been calculated in accordance with this Agreement including the Statement or Industry Arrangements (as appropriate) adjustments shall be made by SONI and included in the relevant account. Where:
- (a) the adjustment discloses an overcharge, SONI shall repay to the User the amount by which the User has been overcharged together with interest at the base rate of the Bank of England from time to time plus 3% calculated from the due date of the invoice containing the overcharge until the date of repayment; or
  - (b) the adjustment discloses an undercharge, the User shall pay to SONI the amount by which the User has been undercharged together with interest at the base rate of the Bank of England from time to time plus 3% calculated from the due date of the invoice that should have included the undercharge until the date of payment.
- 6.5 The User shall pay each account in full within 10 Business Days of its date and SONI shall be entitled to charge interest on the amount unpaid after expiry of the said 10 days at the interest rate specified in Schedule 1 compounded on a quarterly basis.
- 6.6 If the User wishes to raise a bona fide dispute in relation to an account, then:
- (a) the User must provide written notice of the dispute, the reason for the dispute and the amount in dispute to SONI;
  - (b) the User must pay the amount in dispute on or before the due date of the account, except where the amount in dispute is a Qualifying Amount;
  - (c) if the amount in dispute is a Qualifying Amount then the User need not pay the Qualifying Amount unless and until it is agreed or determined that the amount in dispute is payable. The User must still pay the amount not in dispute on or before the due date of the dispute;
  - (d) the Parties shall use all reasonable endeavours to resolve the dispute in good faith;
  - (e) where the dispute remains unresolved after 20 Business Days of the User notifying SONI of the dispute pursuant to paragraph (a), either Party may refer the dispute to resolution in accordance with the General Conditions.
- 6.7 A “Qualifying Amount” is an amount that exceeds five percent (5%) of the total amount stated to be payable by the User to SONI in the account in dispute.
- 6.8 If it is agreed or determined pursuant to clause 6.6:
- (a) that the whole of the amount in dispute is payable by the User, and the User has paid such amount in accordance with clause 6.5, then no further action need be taken;
  - (b) that the whole or any part of the amount in dispute is not payable by the User, and the User has paid such amount in accordance with clause 6.5, then SONI will refund such amount to the User within 10 Business Days of the date of resolution or determination of the dispute, together with interest at the base rate of the Bank of England from time to time plus 3% calculated from the later of (i) the date the

account was paid to SONI and (ii) the date SONI received notice of the dispute pursuant to clause 6.6;

- (c) that the whole or any part of the amount in dispute is payable by the User, and the User has not paid such amount in accordance with clause 6.5, then the User shall pay such amount to SONI within 10 Business Days of the date of resolution or determination of the dispute, together with interest at the base rate of the Bank of England from time to time plus 3% calculated from the date the relevant amount fell due for payment under clause 6.5; and
- (d) that the whole of the amount in dispute is not payable by the User, and the User has not paid such amount in accordance with clause 6.5, then no further action need be taken.

6.9 The User must raise a dispute in relation to an amount in an account rendered by SONI pursuant to clause 6.3 within 24 calendar months of the date of the account.

## **7. Security**

7.1 The User must, at any time that it does not have an Approved Credit Status, deliver to SONI within 10 Business Days of the date on which charges become payable under clause 6 and subsequently maintain Security Cover:

- (a) in the form of a Letter of Credit issued by a financial institution with Approved Credit Status;
- (b) in the form of a cash deposit in a Deposit Account held in a financial institution with Approved Credit Status, which is permitted to accept deposits pursuant to Part IV of the Financial Services and Markets Act 2000; or
- (c) in such other form as SONI agrees in its absolute discretion;

for payment of all monies due to SONI under this Agreement. The amount of the Security Cover is determined under clauses 7.3, 7.4 and 7.5.

7.2 If the User does not comply with this clause 7, SONI may in its discretion by notice to the User given at any time terminate this Agreement with effect from the date specified in the notice.

7.3 The Security Cover amount that the User is required to provide and maintain shall be determined by SONI from time to time. The amount of the Security Cover shall be calculated in accordance with the relevant sections of SONI's Payment Security Policy, as prevailing from time to time.

7.4 SONI may from time to time, by notice, require the User to increase the amount of Security Cover if the amount of the Security Cover provided by the User is less than the amount calculated for it under clause 7.3 (whether due to recalculation by SONI, changes to the relevant sections of SONI's Payment Security Policy, drawings or anticipated drawings on the Security Cover by SONI or any other reason). The User must within 5 Business Days of the notice procure that the Security Cover is increased or deliver to SONI additional Security Cover so as to comply with clause 7.3.

- 7.5 The User may notify SONI that it considers that the amount of its Security Cover is more than is required under clause 7.3 and ask for it to be reduced to the level required under clause 7.3. SONI must not unreasonably refuse such a request, having regard to clause 7.3.
- 7.6 Security Cover must at all times have a validity of at least 3 months. The User must ensure that Security Cover is replaced before this requirement is breached. The User shall in any event replace Security Cover within 5 Business Days of a request from SONI to do so, if the request is made by notice given within the last 4 months of the validity of the Security Cover in place at the time the request is made.
- 7.7 If:
- (a) the issuer of a Letter of Credit ceases to have Approved Credit Status;
  - (b) the bank at which a Deposit Account is held ceases to have Approved Credit Status and/or to be permitted to accept deposits pursuant to Part IV of the Financial Services and Markets Act 2000; or
  - (c) any condition on which SONI accepted any other form of Security Cover under clause 7.1(c) ceases to be met;
- then the User must procure replacement Security Cover within 5 Business Days of the occurrence of the relevant event referred to in clauses 7.7(a) to 7.7(c).
- 7.8 The Security Cover (and in the case of a cash deposit, any interest accrued in respect of the cash deposit, less any bank and similar charges and any taxes deducted by the bank) will be released to the User within 10 Business Days after the later of (i) termination of this Agreement and (ii) the date when the User has paid all amounts owing by it in respect of this Agreement including interest. Release of Security Cover is without prejudice to the rights of SONI under this Agreement and does not relieve the User of any of its obligations or any liability in respect of this Agreement.
- 7.9 SONI may draw down on any Security Cover provided by the User without notice to the User if:
- (a) the User has not paid an amount owed to SONI by the due date under this Agreement;
  - (b) an event of default (as defined in clause 11 of this Agreement) occurs in relation to the User;
  - (c) the User fails to provide Security Cover as required under this clause 7 or otherwise comply with its obligations under this clause 7.
- 7.10 If any of the circumstances in clauses 7.9(a) to 7.9(c) occurs, then all other amounts in respect of charges and other amounts payable by the User to SONI under this Agreement become payable forthwith upon demand by notice from SONI to the User, notwithstanding anything to the contrary in this Agreement.

## **8. Maximum Import Capacity**

- 8.1 The use of the All-Island Transmission Networks under this Agreement is subject to the amount of electricity taken through each Point of Supply on the Transmission System for

which the User is the Supplier not exceeding the relevant Maximum Import Capacity, without the prior written consent of SONI.

- 8.2 For the purposes of clauses 8.1 and 3.1, the relevant Maximum Import Capacity for a Point of Supply shall be the value quoted for that Point of Supply when it was constructed or, if since modified, when last modified, or the value as otherwise determined in accordance with the Connection Agreement (including a reduction following a review). If that information is not available, then it shall be based on the Maximum Import Capacity applicable to the relevant use of system tariff charged to the User in respect of that Point of Supply, except where SONI can reasonably demonstrate that some other figure is the correct Maximum Import Capacity, in which case it is that figure.
- 8.3 In the event that the Maximum Import Capacity is exceeded, SONI may give notice to the User that the Customer has exceeded the relevant Maximum Import Capacity setting out relevant details and requesting the User to have the situation remedied. SONI may also or instead notify the relevant Customer setting out relevant details and request the Customer to remedy the situation.
- 8.4 If the situation has not been remedied within the time required by SONI then, without prejudice to any other rights and remedies provided by this Agreement, SONI may De-energise (or request the De-energisation of) the relevant Point of Supply.

## **9. Compliance with the Grid Code, Capacity Market Code, the Trading and Settlement Code and Good Industry Practice**

- 9.1 The Parties agree to comply with all relevant provisions of the Grid Code, the Capacity Market Code (if Qualified) and the Trading and Settlement Code (unless exempt from the requirement to be a party to same), in each case to the extent applicable.
- 9.2 In the event of any conflict or inconsistency between this Agreement and the above industry codes, the following order of precedence shall apply to the extent of such conflict or inconsistency:
- 9.2.1 The Grid Code;
  - 9.2.2 This Agreement;
  - 9.2.3 The Capacity Market Code; and
  - 9.2.4 The Trading and Settlement Code.
- 9.3 The Parties agree to perform their respective obligations under this Agreement in accordance with Good Industry Practice.

## **10. Metering Equipment and Profiling**

- 10.1 Subject to clauses 10.4 and 10.5, supplies of electricity to Customers at each Point of Supply shall be metered using equipment (“**Metering Equipment**”) that complies with the relevant requirements of Schedule 7 to the Order and the Metering Code and/or such other requirements as may be notified to the User by SONI from time to time.
- 10.2 The User shall ensure that its agents, employees and invitees do not interfere with any Metering Equipment without the prior written consent of SONI, except to the extent that

emergency action has to be taken to protect the health and safety of persons or to prevent serious damage to property adjacent to the Metering Equipment.

- 10.3 Where the Metering Equipment for a Point of Supply is not Half Hour Metering Equipment, and where permitted by the applicable Industry Arrangements, SONI may use load profiles and estimated annual consumption to calculate the charges payable under this Agreement.
- 10.4 The procedures for the use of load profiles and estimates of annual consumption shall be those established by Industry Arrangements where applicable, or otherwise, as established by SONI and notified to the User from time to time and SONI shall rely on the load profiles so selected for the purposes of calculation of charges to the User.
- 10.5 Supplies of electricity to Unmetered Customers shall be calculated using the procedures established by Industry Arrangements where applicable, or as otherwise established by SONI and notified to the User from time to time, for the purposes of calculation of charges to the User.

## **11. Events of Default**

11.1 An event of default occurs if:

- (a) the User does not pay any valid account for charges within one month of its date, whether or not SONI has issued a payment reminder in respect of the unpaid account;
- (b) the User fails to perform or comply with any obligations under this Agreement, the Grid Code or the Industry Arrangements within 28 days after receipt of notice from SONI of such failure;
- (c) an order of the High Court is made or an effective resolution is passed for the insolvent winding up or dissolution of the User;
- (d) a receiver, which expression shall include an administrative receiver within the meaning of Article 5(1) of the Insolvency (Northern Ireland) Order 1989, of the whole or any material part of the User's assets or undertaking is appointed;
- (e) an administration order under Schedule B1 of the Insolvency (Northern Ireland) Order 1989 is made in relation to the User or a voluntary arrangement is proposed under Article 14 of that Order in relation to the User;
- (f) the User enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Authority);
- (g) the User is unable to pay its debts within the meaning of Article 103(1) or (2) of the Insolvency (Northern Ireland) Order 1989, save that such sections shall have effect as if for £750 there was inserted £10,000 (and the User shall not be deemed to be unable to pay its debts if any demand for payment is being contested in good faith by the User with recourse to all appropriate measures and procedures);
- (h) any of the conditions precedent described in clause 2.1(a) (relating to the Supply Licence), clause 2.1(c) (relating to distribution use of system, clause 2.1(d) (relating to the Trading and Settlement Code), clause 2.1(e) (relating to the Capacity Market Code, clause 2.1 (f) (relating to the Market Registration

Framework Agreement) and clause 2.1(g) (relating to the provision of security cover) cease to be fulfilled for the User.

11.2 SONI may give notice of termination to the User once an event of default under clause 11.1 occurs, whereupon this Agreement shall terminate. SONI shall be entitled to De-energise, or, in respect of any Points of Supply on the NI Distribution System request that the relevant DNO De-energise, all Points of Supply registered to the User or, where supplier of last resort arrangements are in effect, otherwise to deal with the Points of Supply in accordance with those arrangements.

**12. Termination of Agreement**

12.1 The User may terminate this Agreement by giving written notice of termination, specifying the date, being not less than 28 days after the date of the termination notice, with effect from which the User wishes to terminate this Agreement. Notwithstanding the date specified in the User’s notice of termination, termination shall only be effective when the User has ceased to be the Supplier for any and all Points of Supply and has ceased all imports and exports at Interconnector Connection Points.

12.2 Upon termination of this Agreement in accordance with clause 7.2, clause 11.2, or clause 12.1, SONI shall have the right as between SONI and the User to terminate the agreement specified in clause 2.1(b) (relating to the Connection Agreement).

- 12.3 Upon termination of this Agreement the User shall pay to SONI:
- (a) all charges payable upon or in connection with the termination of this Agreement as described in the Statement;
  - (b) except to the extent already covered under clause 12.3(a), all charges accrued as at the date of termination of this Agreement whether or not invoiced by SONI as at the date of termination of this Agreement; and
  - (c) all reasonable costs and expenses incurred by SONI in terminating this Agreement and, where applicable, De-energising the Points of Supply for which the User was the Supplier and/or all reasonable costs and expenses incurred by SONI in dealing with registration of the Points of Supply for which the User was the Supplier in accordance with any applicable supplier of last resort arrangements.

Signed by the duly authorised representatives of the Parties as an agreement on the date first written above

**SIGNED** by \_\_\_\_\_(Print name) )

for and on behalf of **[SUPPLIER NAME]** )  
)  
)  
)

.....  
Signature

.....  
.....

.....  
**SIGNED** by \_\_\_\_\_ ( Print name) )

for and on behalf of **SONI Limited** )

)

.....  
**Signature**

.....

.....

## **Schedule 1: Charges**

### **1. Use of System Charges**

- 1.1 The User shall pay to SONI charges for Use of System, SONI will use reasonable endeavours to give Users notice of charges, nonetheless charges are subject to change without notice following revision of the Statement and its approval by the Authority. The User is required to pay all and any charges due in respect of Use of System as described in the Statement and the accompanying schedules.
- 1.2 The User shall pay Use of System Charges, which have been costed by SONI relative to each Point of Supply for which the User is the Supplier and each Interconnector Connection Point on the Transmission System.
- 1.3 The primary source of data on which Use of System Charges shall be calculated is data obtained pursuant to the provisions of the Market Registration Code (including where such data has been estimated or substituted).
- 1.4 SONI may charge the User Use of System Charges calculated by reference to electricity discovered or reasonably and properly assessed to have been consumed by a Customer at a Point of Supply for which the User is the Supplier but not recorded at the time of consumption (for whatever reason) by the Metering Equipment installed for the Point of Supply. At any time that SONI calculates and Charges the User Use of System charges under this paragraph 1.4 of this Schedule 1, SONI shall provide an explanation of the calculation of the charges and basis for the calculation.
- 1.5 SONI may charge the User Use of System Charges calculated by reference to electricity assessed to have been consumed by a Customer at a Point of Supply during a period in which the User was supplying electricity to the Customer at that Point of Supply in accordance with a direction of the Authority pursuant to supplier of last resort arrangements, if such arrangements are in effect, from the time that the direction of the Authority takes effect. This right exists from the date the direction of the Authority takes effect and continues irrespective of whether or not the Point of Supply is registered to the User in accordance with the Market Registration Code or other applicable Industry Arrangements until such time as another Supplier becomes the Supplier for that Customer.

### **2. Other Charges**

- 2.1 The User shall pay to SONI charges for other services provided by SONI to the User as set out in the Statement or as otherwise published by SONI from time to time.

### **3. Definitions**

- 3.1 For the purposes of this Schedule, the following words and phrases shall have the meaning set opposite them:

Interest Rate	for the purposes of this Agreement the relevant interest rate shall be the higher of (i) the base rate of the Bank of England from time to time plus 3% and (ii) such other rate as may be specified in the Statement.
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**Schedule 2:  
Contact details**

**1. Details of the Supplier (the User under this Agreement)**

Name of Supplier	
Registered Address of Supplier	

**2. Address for notices to the Supplier**

Address for notices	
Attention	
Telephone number	
Email address	
Facsimile number	

**3. Address for notices to SONI**

Address for notices	SONI Limited 12 Manse Road Belfast BT6 9RT
Attention	Contracts and Settlement Department
Telephone number	028 90794336
Email address	<a href="mailto:cas@soni.ltd.uk">cas@soni.ltd.uk</a>
Facsimile number	028 90707560

### **Schedule 3: General Conditions**

The following general conditions shall apply to this Agreement:

#### **1. Assignment and Sub-Contracting**

- 1.1 Subject to clause 1.2, neither Party shall assign its benefit or burden under this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.
- 1.2 The User may assign this Agreement in whole or in part without first obtaining the consent of SONI where such assignation is to an Affiliate of the User but such Affiliate shall cease to be entitled to enforce the terms of this Agreement on its ceasing to be an Affiliate of the User.
- 1.3 A Party may assign or charge its benefit under this Agreement in whole or in part by way of security.

#### **2. Confidentiality and Announcements**

- 2.1 Each Party shall take all proper steps to keep confidential the contents of this Agreement or any commercially confidential information relating to this Agreement or provided by one Party to the other Party pursuant to this Agreement, the Grid Code, or in the course of negotiating this Agreement or otherwise concerning the operations, contracts, commercial or financial arrangements or affairs of either Party, except to the extent that any such information:
  - (a) becomes public through no fault of either Party other than as a result of a breach by that party of its legal and regulatory obligations;
  - (b) is required to be disclosed by any regulatory or legal requirement;
  - (c) is required to be disclosed pursuant to a requirement of any stock exchange or regulatory authority or the Panel on Takeovers and Mergers;
  - (d) is required to be disclosed pursuant to the arbitration rules of the Electricity Arbitration Association in force from time to time or pursuant to any judicial or other arbitral process (including where determination is by an expert) or tribunal having jurisdiction in relation to the User;
  - (e) may be disclosed pursuant to any Industry Arrangement.
- 2.2 No public announcement or statement, other than to the extent of any legal requirement, shall be made by either Party concerning the signature, performance or termination of this Agreement without the written consent of the other Party.
- 2.3 SONI may release such of the site-specific details in any schedule as relate to the User as are necessary to enable Transmission Use of System Agreements and Distribution Use of System Agreements to be signed.

### 3. Limitation of Liability

3.1 Subject to clause 3.2.4 (death and personal injury), neither Party nor its officers, employees or agents shall, in any circumstances whatsoever, be liable to the other Party for:

3.1.1 any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill;

3.1.2 any special, indirect or consequential loss; or

3.1.3 (subject to clause 3.2.1(b)) loss resulting from the liability of such other party to any other person howsoever and whenever arising.

3.2 Other limitations and exclusions

3.2.1 Subject to clause 3.2.2 (liability cap) and clause 3.2.4 (death and personal injury) and without prejudice to clause 3.1 (exclusion of certain losses), each Party (the “**Party Liable**”) and its officers, employees and agents shall be liable to the other Party under or in respect of this Agreement only for (a) loss or physical damage to the other Party’s property or for (b) loss or physical damage to the property of any third party entitled to claim against that other Party in respect of such loss or damage, in either case arising directly from a breach of this Agreement and which at the date of this Agreement was reasonably foreseeable as likely to result in the ordinary course of events from such breach.

3.2.2 Subject to clause 3.2.4 (death and personal injury) and without prejudice to clause 3.1 (exclusion of certain losses), clause 3.2.1 (remedies for breach) or clause 3.3 (exclusive remedies), the liability of the Party Liable and any of its officers, employees or agents to the other Party and any of its officers, employees or agents, whether in contract, warranty, tort (including negligence), breach of duty, strict liability or any other legal or equitable principle, in respect of any:

- (a) breach of this Agreement;
- (b) representation or statement made under or in connection with this Agreement;
- (c) tortious (including negligent) act or omission related to this Agreement of the Party Liable or any of its officers, employees or agents;
- (d) claim by the other Party under an indemnity;
- (e) liability of the other Party or any of its officers, employees or agents to any other person; or
- (f) any other matter arising out of or in respect of this Agreement,

(otherwise than for (1) the liability of SONI under clause 3.8 in respect of the acts or omissions of the Other TSO or ESB and (2) the liability of the User referred to in clause 3.9 and relating to the property of the Other TSO or ESB) shall not exceed, per event or incident or series of related events or incidents, the amount of £1 million (and whether liability arises under one or more of sub-sections 3.2.2(a) to (f)). For this purpose, a “series of related events or incidents” shall include any series of related events or incidents on either or both of the NI Distribution System and the All-Island Transmission Networks, whether affecting one or more Points of Supply or Interconnector Connection Points and regardless of the proximity of such Points of Supply or Interconnector Connection Points.

- 3.2.3 Either Party shall be entitled to deduct from any sums payable under this Agreement by way of compensation for loss or damage:
- (a) any sums payable by such Party under any other agreement entered into between the Parties in respect of such loss or damage suffered by the other Party, its officers, employees or agents; and
  - (b) any sums payable to the other Party by a third party in respect of such loss or damage suffered by the other Party, its officers, employees or agents.
- 3.2.4 Nothing in this Agreement limits or excludes liability that cannot, by law, be limited or excluded, including liability for death or personal injury caused by the negligence of a Party or that Party's officers, employees or agents or for the fraud or fraudulent misrepresentation of a Party or that Party's officers, employees or agents.
- 3.3 Subject to clause 3.2.4 (death and personal injury), and clause 4 (Saving for statutory powers), the rights and remedies provided by this Agreement to the Parties are exclusive and not cumulative and exclude and are in place of all substantive (but not procedural) rights or remedies express or implied and provided by common law or statute in respect of the subject matter of this Agreement, including without limitation any rights either Party may possess in tort which shall include without limitation actions brought in negligence and/or nuisance. Accordingly, each of the Parties hereby waives to the fullest extent possible all such rights and remedies provided by common law or statute, and releases the Party Liable to the same extent from all duties, liabilities, responsibilities or obligations provided by common law or statute in respect of the matters dealt with in this Agreement and undertakes not to enforce any of the same except as expressly provided herein.
- 3.4 Each Party agrees that the other Party holds the benefit of sub-clauses 3.1 to 3.3 inclusive for itself and as trustee and agent for its officers, employees and agents.
- 3.5 If any provision or sub-provision of this clause 3 or the application of any such provision or sub-provision is or becomes or is declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject or by any other Competent Authority, such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of this Agreement (including the other provisions and sub-provisions of this clause 3) which shall continue in full force and effect and shall continue to bind the Parties notwithstanding such invalidity, unenforceability or illegality.

#### Rights against third parties

- 3.6 In consideration of the rights conferred upon the User under this Agreement, including under clause 3.8, the right of the User to claim in negligence, other tort, or otherwise howsoever against a Relevant Person in respect of any act or omission of that Relevant Person in relation to the subject matter of the Relevant Agreement is hereby excluded and the User agrees not to pursue any such claim, provided that:
- 3.6.1 nothing in this clause 3.6 shall restrict the User's ability to claim against a Relevant Person under any contract to which the User and such Relevant Person are (from time to time) party, or in respect of fraudulent misrepresentation or death or personal injury resulting from the negligence of a Relevant Person; and

3.6.2 such exclusion and agreement in respect of ESB shall only apply in respect of those periods in which the RoI Infrastructure Agreement contains the Equivalent Waiver.

3.7 Each Relevant Person may rely upon and enforce the terms of clause 3.6 against the User. The third party rights of a Relevant Person in this clause 3.7 may only be enforced by that Relevant Person subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999. Notwithstanding any other provision of this Agreement, this Agreement may be amended without the consent of any third party and section 2(1) of the Contracts (Rights of Third Parties Act) 1999 shall not apply to this Agreement.

#### All-Island liability

3.8 Any Relevant Act or Omission which causes physical damage to the Plant, Apparatus or other property of the User shall, for the purposes of determining SONI's liability under this Agreement, constitute an act or omission of SONI in breach of this Agreement: provided that the liability of SONI under this Agreement, in respect of such act or omission of:

3.8.1 the Other TSO, shall not exceed the lower of (a) the monetary cap referred to in clause 3.2.2 and (b) the monetary cap that would have applied to the Other TSO's liability under the Equivalent Agreement;

3.8.2 ESB, shall not exceed the lower of (a) the monetary cap referred to in clause 3.2.2, and (b) the monetary cap that applies to ESB's liability under the RoI Infrastructure Agreement; and

3.8.3 NIE Networks' shall not exceed the monetary cap referred to in clause 3.2.2.

#### Foreseeability

3.9 For the avoidance of doubt and for the purpose of determining the User's liability under this Agreement, any liability of SONI, (in respect of any acts or omissions of the User in breach of this Agreement that cause physical damage to the Plant, Apparatus or other property of a Relevant Person) to NIE Networks' under the Transmission Interface Arrangements or to the Other TSO under the System Operator Agreement, will be a reasonably foreseeable consequence of a breach of this Agreement by the User in respect of which SONI will be entitled to recover damages from the User: provided that the liability of the User under this Agreement in respect of damage to the property of:

3.9.1 the Other TSO, shall not exceed the lower of (a) the monetary cap referred to in clause 3.2.2 and (b) the monetary cap that would have applied to the User's liability under the Equivalent Agreement;

3.9.2 ESB, shall not exceed the lower of (a) the monetary cap referred to in clause 3.2.2, and (b) the monetary cap that applies to the Other TSO's liability under the RoI Infrastructure Agreement; and

3.9.3 NIE Networks' shall not exceed the monetary cap referred to in clause 3.2.2.

#### Tortious waiver

3.10 In respect of each Relevant Person other than ESB, SONI shall obtain a waiver from such Relevant Person in favour of (and enforceable by) the User in respect of any claim such Relevant Person may have in negligence, other tort, or otherwise howsoever against the User in respect of any act or omission of the User in relation to the subject matter of this Agreement and SONI shall ensure that such waiver includes an agreement on the part of the

Relevant Person not to pursue such claim: provided that SONI need not obtain such person's waiver of any claim such person may have against the User under any contract to which the User and such person are (from time to time) party or in respect of fraudulent misrepresentation or death or personal injury resulting from the negligence of the User.

3.11 In respect of ESB, SONI shall:

3.11.1 ensure that the System Operator Agreement contains an obligation on the Other TSO to enforce its obligations under the RoI Infrastructure Agreement in respect of the Equivalent Waiver; and

3.11.2 enforce its rights under the System Operator Agreement in respect of the Equivalent Waiver.

#### Other

3.12 Upon reasonable notice, SONI shall provide to the User such information in relation to the form (but not the commercial content) of the Relevant Agreements as the User may reasonably request, including as to the monetary caps on liability thereunder.

3.13 If any of the provisions in any Relevant Agreement relating to any waiver by a party to that Relevant Agreement in respect of claims against either Party is or becomes or is declared invalid, unenforceable or illegal by the courts of any jurisdiction or by order of the Commission of the European Communities or of the Secretary of State, then the Parties shall meet to discuss the amendments needed to be made to this Agreement to reflect that the waiver does not then exist and shall, where such amendments cannot be agreed, refer the matter to the Authority for final determination (and subsequently amend this Agreement to in accordance with such determination).

#### **4. Saving for Statutory Powers**

Nothing in this Agreement shall prejudice or affect the rights or powers of either Party under any statute, order in council, statutory instrument, regulation or order for the time being in force.

#### **5. Waiver of Rights**

No delay or forbearance by either Party in exercising any right, power, privilege or remedy under this Agreement, or the Grid Code shall operate to impair or be construed as a waiver of such right, power, privilege or remedy. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other future exercise thereof or the exercise of any other right, power, privilege or remedy.

#### **6. Entire Agreement**

This Agreement contains and expressly refers to the entire Agreement between the Parties with respect to its subject matter and expressly excludes any warranty, condition or other undertaking implied at law or by custom and supersedes all previous arrangements and understandings between the Parties with respect to its subject matter and each of the Parties acknowledges and confirms that it does not enter into this Agreement in reliance on any representation, warranty or other undertaking by the other Party not fully reflected in the terms of this Agreement.

## **7. Governing Law**

This Agreement shall be governed by and construed in all respects in accordance with the law of Northern Ireland. Subject and without prejudice to clause 8, the courts in Northern Ireland shall have jurisdiction to settle any disputes, which may arise out of or in connection with this Agreement.

## **8. Disputes Resolution**

8.1 Save where expressly stated in this Agreement to the contrary and subject to any contrary legal requirement, any dispute or difference associated with this Agreement between the Parties hereto shall be referred to arbitration pursuant to the arbitration rules of the Electricity Arbitration Association in force from time to time.

8.2 The proper law of any reference to arbitration hereunder and in particular (but not so as to derogate from the generality of the foregoing) in order to comply with the rules of the Electricity Arbitration Association the provisions of the Arbitration Act 1996 shall apply to any such arbitration.

8.3 Where a third party brings any legal proceedings against either Party, that Party wishes to join the other party in such proceedings where otherwise a dispute or difference would have been referred to arbitration under sub-clause 8.1, the court in which legal proceedings have been commenced shall have jurisdiction unless such an arbitration has commenced before the legal proceedings are have been commenced.

## **9. Savings Clause**

If any provision of the Agreement is or becomes or is declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject or by order of the Commission of the European Communities or by order of the Department for the Economy such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of this Agreement which shall continue in full force and effect.

## **10. Variation**

10.1 No variations to the Agreement shall be effective unless made in writing and signed by both Parties. The Parties shall effect any amendment required to be made to the Agreement by the Authority as a result of a change in the Licence or an order made pursuant to the Order or as a result of settling any of the terms hereof.

10.2 Either Party shall at any time be entitled to propose variations to the Agreement by notice in writing to the other Party. The Parties shall negotiate in good faith the terms of any such variation, but if a variation to the Agreement has not been agreed and put into effect within one month after it has been proposed, either Party shall be entitled to refer the matter to the Authority, pursuant to Condition 26 of the Licence, as if the variation were a new agreement as referred to in that condition. The Parties shall give effect to the determination of the Authority and shall enter into any agreement supplemental to the Agreement as shall be necessary to give effect to any variation agreed or so determined.

## **11. Notices**

- 11.1 Unless otherwise agreed, save for notices which are given pursuant to the Grid Code (as to which the procedures provided for in the Grid Code shall apply) any notice or other communication to be given by one Party to the other under, or in connection with the matters contemplated by this Agreement shall be sent to the addresses or facsimile numbers given and marked for the attention of the person specified in Schedule 2 or such other address, facsimile number or person as one Party shall from time to time designate by written notice to the other.
- 11.2 Save for notices which are given pursuant to the Grid Code any notice or other communication to be given by one Party to the other Party shall be in writing and shall be given by letter delivered by hand or sent by first class prepaid post (airmail if overseas) or facsimile transmission and shall be deemed to have been received:
- 11.2.1 in case of delivery by hand when delivered; or
  - 11.2.2 in the case of first class prepaid post, on the second day following the day of posting, or if sent airmail from overseas, on the fifth day following the day of posting; or
  - 11.2.3 in the case of facsimile transmission, at the time of actual receipt.

## **12. Force Majeure**

If either Party shall be unable to carry out any of its obligations under the Agreement due to a circumstance of Force Majeure the Agreement shall remain in effect but save as otherwise provided herein both Parties' obligations other than any obligation as to payment of charges shall be suspended without liability for a period equal to the circumstance of Force Majeure provided that:

- (a) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- (b) no obligations of either Party that arose before the Force Majeure causing the suspension of performance are excused as a result of the Force Majeure;
- (c) the non-performing Party uses all reasonable efforts to remedy its inability to perform, including in the case of SONI, enforcing any rights available to it under the Transmission Interface Arrangements.

## **13. Counterparts**

- 13.1 This Agreement may be executed in any number of counterparts, and by different Parties on separate counterparts, each of which when executed and delivered shall constitute an original, but all the counterparts together shall constitute one and the same instrument.

## **14. Third Party Rights**

- 14.1 Subject to express provisions to the contrary in the Agreement, a person who is not a party to the Agreement has no right, and is not intended by SONI or the User to have any right, under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this

Agreement, but this clause does not affect any right or remedy of a third party which exists or is available apart from that Act.

- 14.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any person who is a party to this Agreement.